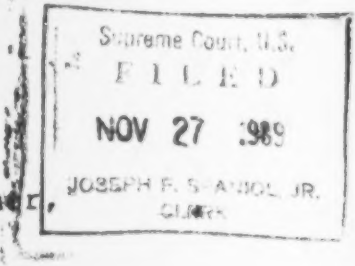
No. 89-860

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989



EARL R. BREES,

Petitioner,

v.

ROBERT E. HAMPTON, INDIVIDUALLY AND AS CHAIRMAN OF THE UNITED STATES CIVIL SERVICE COMMISSION, et al.,

Respondents.

APPENDIX - VOLUME 3 of 3
TO
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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November 27, 1989

No. 89-_____

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

EARL R. BREES,

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ROBERT E. HAMPTON, INDIVIDUALLY AND AS CHAIRMAN OF THE UNITED STATES CIVIL SERVICE COMMISSION, et al.,

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APPENDIX - Vol. 3

Testimony of Earl Roland Brees:

MR. MULLIGAN: One of the issues here is whether the BPI acted illegally in refusing to accept the complaints of discrimination 713 in violation of the Civil Rights Act and a violation of the Provision of 5 CFR

76190. We've had testimony that the Bureau of Personnel Investigations has considered itself immune to complaints of racial discrimination. We have testimony from two witnesses in Bureau, if memory serves me correctly, that that is still the position of the Office of the Executive Director and of the Director of the Bureau of Personnel Investigations. If such any judiciations based upon a disregard of Law and Regulations is certainly not a closed issue. It is one of the vital issues before this Hearing.

MR. BUCHOLTZ: Mr. Mulligan misstates the testimony of those witnesses. As the record will show those witnesses testified that under the Regulation as written, an applicant for employment with the Commission that is, an applicant for employment in another Agency does not have a right under part

713 as it was written in 1969, and, indeed, as it was written today, to file a discrimination complaint against BPI. Those employees of BPI certainly do have a right to file discrimination complaints against BPI. Mr. Mulligan did misstate the testimony of the witnesses. And, I believe my objection is valid. I would like it ruled pon, please.

Q. Mr. Brees, have you worked on Computer Systems in the Government during the course of your employment?

A. Yes. I am presently a Senior Computer Specialist GS-0334-13. I also have taught Government auditors, grade 9 through 15 how to audit Computer Systems. I have also taught these courses in college and I have taught in graduate school in a major university with Computer Systems.

Q. With your knowledge of Computer Systems and Government applications and the knowledge of the record keeping system some of which we reviewed during the course of this Hearing, can you state whether it's possible to develop a system in comparison to be required by 713.216 in the investigation of your case?

A. Yes. With the record system of the United States Government that's available, and the fact that the Civil Service Commission has said, that the official personnel folders of each Government Agency is part of the Civil Service Commission's Systems Record, it is possible, I could do this very easily to determine each person who was found eligible or ineligible on Civil Service Registers especially on announcement on 425 WA 707. And, it's possible to determine that throughout the

investigation the criminal record of said person and the race of said person.

Q. Do the records that remain changed with the Bureau of Recruiting and Examining, as introduced here, provide any assistance in the development of such information?

A. Yes, I believe it's Exhibit 14. I'm not sure of the number, for the Government introduced an informal record for it which the Government Regulations would define as a flag.

MR. BUCHOLTZ: Objection. Among that testimony from Mr. Wright as to what a flag was and as to whether or not this, in particular, was a flag. If we are going to have contrary evidence, let's have that evidence as opposed to whose restatement which wasn't even asked for in the --

BY MR. MULLIGAN:

Q. I was going to ask you if you were familiar with the Government as the definition of a flag was stated in FDM supplement internal 731-71?

A. Yes, page 10 of the FDM supplement internal 731-71 issued in March, 1966, says that flagging is renoting the Commission's records to show that there is disqualifying or potentially disqualifying information about a person who should be condiedred in future matters effecting them. Mr. Wright testified that the informal record card was used exactly for that purpose. And, it was used for that purpose in my case.

Q. I show you the Exhibit File, copies that were made available to the Complainant in this Hearing and the direct attachment to those of Mr. Wright. I show this document defining flag to Mr.

Bucholtz.

MR. BUCHOLTZ: Is that from the Exhibit, Mr. Mulligan?

MR. MULLIGAN: This is from the supplement internal 731-71, all of it. This has not been admitted into evidence.

MR. BUCHOLTZ: Is this page in evidence?

MR. MULLIGAN: Not to my knowledge. This is not one of the pages, to my knowledge, that it's in evidence. If you have some information --

MR. BUCHOLTZ: No.

EXAMINER ABLOVE: Is that the BPI internal instruction, Mr. Mulligan?

MR. MULLIGAN: Yes. And, I offer the document in evidence to show the definition of flagging that's defined in the Civil Service Commission Regulations.

MR. BUCHOLTZ: I see no reason why we have to burden the record with the definition of something which the

evidence has shown was not done in this case. Mr. Wright explained what flagging was. Mr. Wright explained that it was done in that case. And, indeed, that information is from BPI and doesn't even refer to BRE.

EXAMINER ABLOVE: Well, since Mr. Brees has already read this definition into the record, we know that it is a part of the internal supplement 731-71, it is not necessary. Is he going to answer your question? You had asked him question previously and I interrupted is answer, you may go on.

MR. MULLIGAN: I directed his attention to those Exhibits, to look at them in preparation for the next qustion as I recall, while I was introducng this document, or attempting to.

I asked Mr. Brees whether or not the documents that are not Exhibits

in a series of Exhibits introduced by Mr. Wright, identified by Mr. Wright, provides assistance, would provide assistance to you in developing statistical information required by 713.216 in this case:

THE WITNESS: Yes, Exhibit 14, the informal card.

BY MR. MULLIGAN:

Q. How does that provide assistance?

A. Exhibit 14 shows that not only is a flag kept in ineligible ratings but also it's kept when someone is found eligible. It shows here in the middle of the page that I had been sent to ID on 10-10-73, suitability determination. And, then the next line says suitable 3/5/75. So, from this, assuming that every person is treated the same, I would be able to identify every person who had been referred under announcement 425, it

says a 425 on this. It would be referred to BPI and I would know from this case that they had been found suitable. From the card, therefore, I would have a list of everybody who had been referred and found suitable. But from the bottom card which is on WA 7-07 received 4/29/68, 51768 suitability 61969 ineligibility suitability. I would know everyone on announcement WA 7-07 who had been found unsuitable by the BPI.

By this information, I would have the list, first of all, of everyone who had been referred, and I would know which ones had been found suitable, which nes ad been found unsuitable. I could then go to the Bureau of Personnel Investigation and I could determine from their investigative files, from their FBI Reports, from the reports they get from other Government Agencys other from the

FBI what offenses that person had been convicted of. The Civil Service Commission receives from the FBI as a part of a normal National Agency check, inquiry FBI information on arrests that have been reported to the Federal Bureau of Investigations by local law enforcment agencys from the reports of the FBI and from the investigative reports themselves, such as Exhibit 10, 16. I could determine what offenses someone had been arrested for and if there was a final disposition what offense they had been convicted of.

Since I already know what register they are from these informal cards, I could then, under the Civil Service Commission directives, because each official personnel folder in each Government agency is part of the main Civil Service Commission system record.

I could go to the Personnel folder of these people and, even if I didn't know this from the informal record card, what announcement they were hired from, from their official personnel folder and from documents in the Personnel Office of each Government Agency, I could determine from what Civil Service Register they were hired, without even having these cards.

And, then the Government's way of identifying the person's race is to look at them. That's exactly what part 713 says. In order to determine the race of each individual, I would simply walk up to them and look at them and see what their race is, and identify them by race.

Q. From these earlier testimonys pertaining to the maintenance of the master file or from Personnel are their instructions, to your knowledge, to show

that race is averaged into the automative data for the records?

A. Yes. Race is entered in almost every automative data system. Department of Commerce has had it since 1967 when they were not allowed to have it back in those days, a race identifier. The Civil Service Commission and its automative personnel file of all Federal employees, not just the ones employed by the Civil Service Commission, has race as an identifier. They also have as an identifier whether or not people have been hired under certain programs for convicted people.

They also have in their automative system where the person is working. So, it would be a simple matter to take the Social Security Account Number, which can be found in the Bureau of Personnel Investigations, for each one

of these people we are looking at, and run it through the Civil Service Commission system and find out in which Government Agency the person worked.

But, it would probably not be necessary to do that because there's a register card associated with each one of these informal cards. So, even if you didn't have the automative system, you could look at the register card and see which certificates these people were put out on and, I would assume if we could get hold of a register card, mine, that I would like to get from announcement 408, that you could tell from the register card, that a person was hired from a particular certificate. I know you can tell from the person's official personnel folder exactly what Civil Service Commission certificate the person was hired from and exactly what

announcement number the person was hired from.

BY MR. MULLIGAN:

Q. Mr. Brees was addressing yesterday the development of statistical information. That could be used to comply with the requirements that information be provided in statistical form for the purpose of comparison of the treatment of members of his race with members of others.

HEARING EXAMINER: Mr. Mulligan, it's not necessary to summarize yesterday's testimony. Just go ahead.

MR. MULLIGAN: I'm introducing this so we can have some orderly connection between yesterday's testimony and today's.

HEARING EXAMINER: I believe we all remember it. You will please just start.

MR. MULLIGAN: I have two documents here which I will show to counsel.

BY MR. MULLIGAN:

Q. I show you these two documents, Mr. Brees, and ask you if you will identify them first.

A. Yes. This one document is what is known as a certificate of eligibles. According to Mr. Wright, the government announcement 408 first puts people in what he calls an inventory. Then he said when they need the talents for certain people, they then put them on a register.

Now in the Civil Service Commission in October 1973, when I was placed on a Civil Service register for announcement 408, I was put under four different inventories. One of these inventories was number 192, which is auditing. Another inventory was 197, which is systems accountant. Another was 027, which is computer systems analyst. Another was 021, which has been identified to me as business applications

and data processing. Therefore, I was in at least three and perhaps four inventories here.

If someone came in and said they wanted an auditor, then the Civil Service Commission would pull all of the auditors who met the particular specifications the agency wanted. They would put my name--and I have been informed that my name was one of them--put into the hopper--on a register. They would rank people in the register with scores. Then they would take the people at the top of that register, depending upon how many positions were available, and they would put them on a certificate of eligibles.

Now this particular case here, this certificate of eligibles which seems to be CSC form 1844--it's difficult to read it. It's called certificate of

eligibles. Shows that I was, in fact, put on register and certificate number WAM-74-0181. This information is also in the Bureau of Recruiting and Examining to be checked in the Civil Service Commission.

Then they have different categories. They have A for selected. My name is on this register, along with six other people. I am the fourth highest from the top, fourth from the top.

Beside my name is the letter "A", which indicates that I was the person who was selected from the Civil Service certificate of eligibles. My score was only ninety-three C.P., which means I am a disabled veteran receiving compensation from the United States.

It identifies here 408 senior level positions, and the vacancy was one systems account GS 510 13 in Washington,

D.C. I was the person hired on this certificate of eligibles by the Office of Education on 14 April 1974 as a systems accountant GS-510 13.

Q. I address your attention to the second document and ask if you can identify that.

A. The second document is a standard form fifty, Notification of Personnel Action, identified as a personnel folder copy, and I received both of these documents from my official personnel folder in the Office of Education. The effective date is 14 April 1974--reinstatement career in the Civil Service of the legal authority under item 14 as WAM-74-0181, which is the same number that appears on the certificate of eligibles as the registering certificate number.

In this way, you can tell from the person's standard form 50 what civil service register they were selected from, if you had to go that far and go from the fifties coming back, or you could look on the certificate of eligibles which is in the personnel folder. Sometimes these things are filed in the personnel office, but, in any event, they must be filed in the personnel office to show the legal authority by which the person was hired. They must be able to substantiate how they hired the person.

Q. Now, with this information, does this provide a link in the chain of developing statistical information as required under 713.216 of 5 CSR?

A. Yes, this provides the link if you do not have the formal register cards that Mr. Wright testified to or the official register card of the United

States Civil Service Commission. You could have this link if you just had the BPI records -- the Bureau of Personnel records and went through those records and determined who had criminal records and who had been referred for suitability. And the government documents show who has been referred for suitability. This is in each person's investigative file, who has been found suitable, who has been found unsuitable.

Q. From these documents, can you determine whether that register identification code and the legal authority for hiring is automated or not automated from the records you have there?

A. It's automated. The standard form 50 was produced by a computer. A human being did not produce this. You can tell by the characters that's on it, plus I have personal knowledge that these things

are produced by computers.

On this standard form 50, under Remarks, there is no requirement subject to satisfactory report of investigation which is required to be put on the standard form 50 when someone is subject to investigation for suitability by the United States Civil Service Commission. The Civil Service Commission has no authority to investigate this appointment for suitability.

* * * *

MR. MULLIGAN: I offer this document in evidence.

MR. BUCHOLTZ: I object to this document. This document goes back to 1961. For whatever purpose Mr. Mulligan wants it, he has had the questions asked. He had had the witness answer them. I don't think we need a document from 1961.

MR. MULLIGAN: The purpose of

the document is to show that, if an appointment is subject to suitability or when Mr. Brees was subject to investigation for suitability, this information was reflected on his appointment document.

MR. BUCHOLTZ: Miss Ablove, it shows that possibly, but that was for 1961. It's irrelevant to this case.

HEARING EXAMINER: He has also testified as to what it contains. I don't think it's necessary. I will not accept that document.

BY MR. MULLIGAN:

Q. Have you received any indication from any government official that, while perhaps inconvenient and expensive, using techniques other than those that you have outlined that it would be possible to have developed statistical information required under

713.216?

A. Yes. In the proposed disposition of June 1976--

Q. I show you--

HEARING EXAMINER: That document is already in the file, if that's the one to which you are referring.

THE WITNESS: In the proposed disposition of of 16 June 1976, Mr. McQuoid, the Deputy Executive Director of the Civil Service Commission has listed in detail exactly how the Civil Service Commission could have developed the statistics.

At the bottom of page two, Mr. McQuoid starts the steps. Number one--

MR. BUCHOLTZ: Objection to the recitation of the steps. The document is in the record.

HEARING EXAMINER: That is correct.

MR. BUCHOLTZ: If they want to be commented on and discussed, that

something else, but there is no reason to read them.

HEARING EXAMINER: That objection is sustained. Mr. Mulligan, I counseled you about this yesterday. The document s in evidence. I will read it. If you have comments to offer, then go ahead and ask questions.

THE WITNESS: How can I compare it if I don't read what it says and compare it?

HEARING EXAMINER: I don't want it read, Mr. Mulligan. You may continue.

BY MR. MULLIGAN:

Q. Will you compare the steps that are whown in this document you have just identified?

A. With Exhibit 14, the informal record care or Exhibit 16, the former register card, I could identify all applicants who applied under these

announcements as Mr. McQuoid has set forth in his letter as step one. I could also identify these applicants by searching the files of the Bureau of Personnel Investigation, because in the files of the Bureau of Personnel Investigation is each CSC form 678, such as is shown in the Government's Exhibit number six, that also identifies in item four the announcement number that's involved. And, in item one--this is a two-part form. The top half is filled out by the Bureau of Recruiting and Examing. The bottom half is filled out by the Bureau of Personnel Investigations. So the bottom half, number ne, tells you whether or not the application in acceptable or whether or not it has been rated ineligible on suitability. So I could determine right then every person--I could identify all

applicants who have applied under any of the announcements that I applied under during the time of my application.

Now the Government as testified that they are required to keep the register cards for five years. Mr. Wright has also stated that the informal record card is destroyed when the formal register card is destroyed. Yet, the government has not brought forth the formal register card that goes with the informal register card that's in Exhibit 14 at the bottom for announcement number WA 707. Otherwise, they kept the informal card, which is a flag for whenever someone applies under this announcement. They automatically check this card according to Mr. Wright, to see whether or not the person has ever been rated on suitability.

After they check this flag at the bottom of Exhibit 14, if the person has been rated ineligible on suitability, they automatically refer the new application to the Bureau of Personnel Investigations. Now when I filed my complaints of discrimination against the United States Civil Service Commission, all these cards existed. When I filed my complaints in 1969, February, April, May, July-- the government had the ability at that time to process and compare every person who had been found eligible or ineligible on the same registers I had applied for. Computer technician, training instructor, accountant, computer systems analyst, et cetera. The government refused to do so.

Now n the process of not complying with part 713, the Government had destroyed the cards for 1969.

Allegedly. And yet, on Exhibit 14 at the bottom we found that the Govenrment kept the card on me as a flag to make sure that if my application ever came through again, I would be referred to BPI.

Now, in 1974, when I filed a complaint of racial discrimination on the 20th of January 1974, that is not a part of the 713.216 investigative file and which has not been processed for the United States Government at all. The Government was able at that time to freeze, at least from January '74 back to January '69, given their five-year destruction period. So in January 1974, the Government was able to determine all applicants who applied nder the announcement I applied under during the time of my applications for the period January 1969 through 28 March 1969 when I was declared ineligible by the Bureau of

Personnel Investigations. So these cards did exist. That takes care of point one.

And two of Mr. McQuoid's way of developing statistics, because from this you could determine which of the applicants were subjected to suitability investigations and determinations.

Exhibit 14, the informal register card, at the bottom, for announcement WA 707, shows that I was referred on 17 May 1968 for suitability, and has a date of 19 June 1969 ineligible suitability.

The card above that, announcement 425, which is a successor register for announcement WA7907 for accountant and auditor, shows that they sent an application for accountant under announcement 425 for the I.D. investigations I guess, on 10/10/73 for suitability determination.

Now Mr. McQuoid is to determine which applicants were subject to suitability investigations and determinations. This care in the middle of Exhibit 14 shows that I was referred for suitability determination, shows hat on 5 March 1975 I was declared suitable. Now this card, if it's kept for five ears, would still be available to compare me with every person who applied under announcement 425 and who was referred for suitability determination and the answer back. Also, the Exhibit 56, the CSC Form 678, records the same information which would be in the Bureau of Personnel Investigations and in the Bureau of Recruiting and Examining when they send it back.

And, from this, you could also determine which of the applicants subjected to the investigations for

determination were rated suitable and which were rated unsuitable, which is Mr. McQuoid's point three on page three of his une 1976 proposed disposition.

In order to determine which of the applicants were ex-offenders and the nature of the offense and the positions applied for--you have already established the positions applid for and, given the comprehensive investigative file that I have and Exhibits 10 and 16 of the 713.216 investigative repor, it's possible that, from that and the FBI reports, to determine who is an ex-offender, the nature of the offense, and you already know the position they applied for, plus in their nvestigative file is going to be CSC forms 678, such as in Exhibit 6, which will tell you every position that this particular person applied for.

It's right in the investigative file.

Now, to determine the race of the applicants or ex-offenders, once you've established all this information, and, of course, the informal record cards and the formal register cards, such as in Exhibit 16 and Exhibit 14, do not show social security account number, but the records in the file of the Bureau of Personnel Investigations do show social security account numbers. So you could get that information at that time.

So now you would have from the Bureau of Recruiting and Examining and from the Bureau of Personnel Investigations -- you would have the person's social security account number. The date of birth, person's name, the announcement and, from the BPI files, you would have the offenses, the disposition of the offenses. Then you could go to

the Civil Service Commission's central automated personnel system. You could run through the system of the social security account number. In fact, you could do it with a name. You don't need the social security account number. It's just more efficient to do it with a number. And you could determine where all these people worked.

Now, to determine the race of the applicants, you could simply go to each agency because the personnel records in each agency is part of the Commission's system of records. And you could probably identify the person by asking supervisors or, if you couldn't find the supervisor to ask the race of the individual, you could go to the individual himself or herself, and look at them, and you would then determine the race of the applicants who were ex-offenders.

Q. Would it be possible to determine race also from the automated system of records?

A. Yes. From the automated system, they have a category--a minority group category. And you could determine the race of the individual from the automated system. So you wouldn't even have to leave the Civil Service Commission to determine that.

And the automated system--I've spoken with the person who works on it--and they are capable of going in the automated system and extracting the data that I have mentioned. And they can tell you the race of every one who is in it, and where everyone works.

Q. All right then. Does this establish then that this statistical data could be compiled in the way you have described it?

HEARING EXAMINER: Mr. Mulligan, he's just described it. That's a conclusory question even though counsel for the Agency hasn't said anything. That's an unnecessary question. Go on. Ad. Rec. 2117-2133 filed October 1977.

Testimony of Ronald M. Van Tuyl at Deposition, November 15, 1977:

BY MR. CARLSON:

Q Could you state your name for the record?

A. My name is ronald M. Van Tuyl, Jr.

Q. Could you give us your home address?

A. My home address is 7007 Churchill Road, McLean, Virginia.

Q. Your present position?

A. U.S. Department of Commerce.

Q. Within that, your position?

A. An investigator with the Office of Investigations & Security.

Q. At GS level?

A. 12.

BY MR. MULLIGAN:

Q. Do you recall testifying in a previous hearing involving Mr. Brees?

A. Yes, I do.

Q. At that time certain questions were asked pertaining to the identification of people you had talked with in the Civil Service Commission. Do you recall that?

A. Yes, I do.

Q. Do you recall the answers you gave at that time?

A. Yes.

Q. What were your answers at that time?

A. Perhaps you could refer specifically to instances you are referring to. As I recall, there were at least two names that we did not disclose at that time.

Q. Why did you at that time not disclose these names?

A. Excuse me.

THE WITNESS: At that time the names were not disclosed because I had

been advised by our general counsel that we did not have to reveal the identities of those two people under one or more provisions of the Privacy Act.

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE UNITED STATES ATTORNEY

WASHINGTON, D.C. 20001

IN REPLY, PLEASE REFER TO
INITIALS AND NUMBER

EJS:PCS:cmp

Cl. #74-0324 C

January 10, 1975

Anthony L. Mondello, Esquire
General Counsel
United States Civil Service
Commission
1900 E Street, N. W.
Washington, D. C. 20415

Attention: Joyce Evans, Esquire
Deputy Assistant General Counsel
Litigation Division

Re: Earl R. Brees v. Robert R. Hampton
Civil Action No. 74-972

Dear Mr. Mondello:

Please be advised that with respect to the above-captioned case, we have reviewed the litigation report and pertinent portions of the administrative record. Based on that review, we

recommend that the Appeals Review Board accept a remand on the issue of the voluntariness of plaintiff's, Earl R. Brees, August 6, 971, resignation from the Office of Economic Opportunity. We believe that the decision of the Appeals Examiner's Office, affirmed by the Board of Appeals and Review, not to entertain Mr. Brees' complaint is not in accord with the law in this jurisdiction. It appears settled that a "coerced resignation is, in substance, a discharge effected by adverse action of the employing agency," and that "when the Commission's relieving authority is invoked by nonfrivolous allegations of coercion, the Commission should entertain the appeal and hear and determine the allegations." Dabney v. Freeman, 358 F.2d 533, 535 (D.C. Cir. 1965). Accord Goodman v. United States, 424 F.2d 914

(D.C. Cir. 1970); Goodman v. United States, 358 F.2d 532 (D.C. Cir. 1966).

In addition, we recommend that the Bureau of Personnel Investigations complete, at the earliest practicable date, their study on plaintiff's suitability for Federal employment. As you may recall on September 26, 1974, at a conference in Peter Schaumber's office, Mr. Schaumber asked George Mattox of BPI to explore the possibility of completing the study. Mr. Mattox indicated that he would do so and that the study could be completed within a relatively short period of time.

A status conference is presently scheduled for February 7, 1975, before the Honorable William B. Bryant. If a remand cannot be agreed upon, and the study completed, we are not at all confident, in view of the Court's denial

of our previous motion to dismiss, that we can avoid a trial de novo and eventual production of the investigative file.

Please advise us of your decision as soon as possible. In closing, we wish to thank you for your continued prompt assistance in these matters and the very thorough litigation report provided us by Murray Meeker of your office.

Sincerely yours,

EARL J. SILBERT
United States Attorney

By:
Arnold T. Aikens
Chief, Civil Division

Form 86 Case Serial No.
U.S. Civil Service Commission 502368 4207

SECURITY INVESTIGATION DATA
FOR SENSITIVE POSITION

INSTRUCTIONS - Prepare in triplicate, using a typewriter. Fill in all items. If the answer is "No" or "None" so state. If more space is needed for any item, continue in item 28.

1. Full Name BREES EARL ROLAND

* * * *

Before signing his form check back over it to make sure you have answered all questions fully and correctly.

CERTIFICATION

I CERTIFY that the statements made by me on this form are true, complete, and correct to he best of my knowledge and belief, and are made in good faith.

False statement on this form is punishable by law.

(date) (signature) sign original and first carbon

INFORMATION TO BE FURNISHED BY AGENCY

INSTRUCTIONS TO AGENCY: See Federal Personnel Manual Chapter 736 and FPM

Supplement 296-31, Appendix A, for details on when this form is required and how it is used. If this is a request for investigation before appointment, insert "APPL" in the space for Date of Appointment and show information about the proposed appointment in the other spaces for appointment data. The original and first carbon copy should be signed by the applicant or appointee. Submit the original and the unsigned carbon copy of the form, Standard Form 87 (Fingerprint Chart), and any investigative information about the person received on voucher forms or otherwise, to the United States Civil Service Commission, Bureau of Personnel Investigations, Washington, D.C. 20415. If this is a request for full field security investigation, submit these forms to the attention of the Division of Reimbursable Investigations: if this is a request for preappointment national agency checks, submit these forms to the attention of the Control Section.

RETAIN THE CARBON COPY OF STANDARD FORM 86 (SIGNED BY THE APPLICANT OR APPOINTEE) FOR YOUR FILES)

DATE OF APPOINTMENT	TYPE OF APPOINTMENT
8-27-67	competitive
CIVIL SERVICE REG. NO. OR OTHER APPOINTMENT AUTHORITY	**TITLE OF POSITION AND GRADE**
315.501	Systems Acct. GS-12

DEPARTMENT OR AGENCY	DUTY STATION
Office of Economic Opportunity	Washington, D.C.

SEND RESULTS OF PREAPPOINTMENT CHECK TO:

G.T. Willis, Jr., Security Officer
Office of Economic Opportunity
Washington, D.C.

This Is A Sensitive Position

/s/ G.T. Willis, Jr.
(Signature and Title of Authorized Agency Official)

Federal Personnel Manual (FPM), Chapter 306, Subchapter 7 - Employment of Public Offenders.

7-1. GENERAL

This subchapter covers programs for Federal employment of public offenders. Section 7-2, Rehabilitated Offenders, describes the program for Federal employment of community residents with past records of convictions who are judged to be rehabilitated. Section 7-3, Work Release, describes the program for Federal employment in the community of selected inmates of Federal and District of Columbia correctional institutions.

7-2. REHABILITATED OFFENDERS

a. Policy. It is the policy of the Federal Government to hire, carefully and selectively, rehabilitated offenders for jobs where they are needed and for which they are qualified by education, training, and competitive

examining procedures. This policy stems from the belief that employment opportunity for the rehabilitated offender is an effective tool in the national effort to prevent crime. It provides the Federal Government with an additional source of manpower and enables the rehabilitated offender to become a working, tax-paying citizen.

b. Background. * * * *

c. Program implementation.

* * * *

(1) The Commission and the employing agencies will accept applications from persons who have records of criminal convictions and will consider for employment those adjudged to be rehabilitated.

(2) For all positions in the Federal service each case must be judged on its own individual merits. This means

that the Commission and appointing officials will take into account such matters as:

--Nature and seriousness of the offense.

--Circumstances under which it occurred.

--How long ago it occurred.

--Age of person when he committed the offense.

--Whether the offense was an isolated or repeated violation.

--Social conditions which may have contributed to the offense.

--Any evidence of rehabilitation demonstrated by good conduct in prison or in the community, or book, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional

work-release programs, and the recommendation of persons who have or have had the applicant under their supervision.

--The kind of position for which the person is applying.

(3) In administering the merit system the objective is that persons with records of criminal convictions who are attempting to obtain employment in the Federal service receive, on an individual basis, mature and sophisticated evaluations, taking into consideration the social and humane need for their employment as the final step in the rehabilitation process, as well as the requirements of the positions for which they apply.

(4) Felony offenders, after suitability determination, may be employed while they are still on

probation or parole. All cases will be decided on their own merits taking into account the nature of the position for which application is made. (A felony is defined as any crime for which the court has mposed a prison term exceeding one year and there has been some period of actual confinement under the sentence.)

(5) * * * *

Federal Personnel Manual, Chapter 306, Subchapter 7

7-3. WORK RELEASE

a. General. Employment is vital to the ultimate completion of the rehabilitation process. The need to work, to belong, to take pride in accomplishment is as representative of persons still in prison as it is of the general population. Recognizing this, Congress enacted legislation authorizing Federal and District of Columbia prisons to establish programs whereby selected inmates could be employed by Federal agencies on work-release in jobs for which a local recruiting shortage exists. The programs were set up under the Prisoner Rehabilitation Act of 1965 and the District of Columbia Work Release Act of 1966.

* * * *

(1) * * * *

(e) Work-release ordinarily shall be limited to approximately the six months immediately preceding release or parole eligibility; however, when used to complement institutional training programs or to provide prisoner income, work-release may be for longer periods of time;

* * * *

(2) * * * *

(d) Continued employment after release from custody. To permit continuing employment of the employee after his release from custody, the excepted appointment effected or extended under section 213.3102(x) prior to the appointee's release may continue in effect for no more than one year after his release from custody. This will provide a period of trial employment upon which

to base suitability and other determinations for later consideration for appointment under regular competitive examining procedures. After release from custody, these excepted employees should apply for competitive appointments under regular examining procedures and suitability standards. * * * *

June 30, 1975

Honorable Rex E. Lee
Assistant Attorney General
Civil Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Lee:

REMAINDER OF PAGE DELETED WITH FOLLOWING NOTATION:

Portions deleted not relevant to the complainants allegations regarding the Rehabilitated Offender Program.

We would also emphasize that even if the Commission's regulations provided for the processing by the Commission of EEO complaints from employees or applicants for employment with other agencies, it is doubtful that the plaintiff would prevail on his EEO complaint in the absence of a showing by him that the rehabilitated offender program, as implemented by the defendants in this action, is racially discriminatory. (We are appending a copy of a Commission report, dated June 28, 1974, which discusses the rehabilitated offender program. The appendices have been omitted.) It would seem that in order to establish his claim, the plaintiff would have to show that others similarly situated, i.e., Blacks who committed similar offenses and applied for similar positions received appointments, while the plaintiff did not.

The Government does not maintain statistics which would indicate the racial backgrounds of individuals who, subsequent to their being convicted of criminal offenses, became employees of the Federal Government, nor does the Government maintain any racial data based on the rehabilitated offender program. (See page 6 of the appended June 28, 1974 report.) Thus, even if a hearing were granted, neither the Government--nor presumably the plaintiff--would be able to present any meaningful evidence, statistical or non-statistical, concerning the employment of former public offenders in the Federal Government.

signed 6/30/75
Anthony L. Mondello
General Counsel

MEMORANDUM

Subject: Earl Roland Brees v. Robert E. Hampton, et al., USDC D.D.C., Civil Action No. 75-0178

From: Carl F. Goodman
General Counsel

TO: Edward A. Dunton
Deputy Executive Director

Herman D. Staiman, Chairman
Appeals Review Board

Attached is a letter received from the Assistant United States Attorney who is handling this case. We have been corresonding with Mr. Schaumber, the Assistant United States Attorney, over an extended period of time regarding the possibility of the Commission's accepting a remand of Mr. Brees' appeals. One appeal pertains to his allegation that is resignation from OEO was coerced; the other to his allegation that the Commission discriminated against him by

delaying his suitability determination. This second allegation has two nderalying premises. The first is, that under the rehabilitated offender program, black felons are rated suitable and hired for Government employment whereas he, a white misdemeanant, was non considered suitable. The second is that the Commission delayed his suitability determination as a reprisal for discrimination complaints which he filed.1/

PORTIONS DELETED NOT RELEVANT TO DISCRIMINATION COMPLAINT.

1/ The Commission recently rated Mr. Brees as suitable.

PORTIONS DELETED NOT RELEVANT TO DISCRIMINATION COMPLAINT.

In denying the discrimination complaint, the Commission relied on he rationale that Mr. Brees was neither an employee of the Commission nor an applicant for employment with the Commission. This argument is, of couse, untenable and the Commission now has before it a proposal to amend the regulations to provide for acceptance of complaints by non-Commission employees who allege that they were discriminated against by an action of the Commission.

Ad. Rec. 3366 - filed October 1977.

42 U.S.C. §2000e-16. Nondiscrimination in Federal Government employment.

(a) Discrimination prohibited. All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies is defined in section 105 of title 5, (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches

of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b)-(e) [Unchanged]

(As amended, Feb. 15, 1980, P.L. 96-191, §8(g), 94 Stat. 34.)

* * *

(c) Civil Action by party aggrieved. Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a) [subsec. (a) of this section], or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order

11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706 in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Application of certain provisions. The provisions of section 706(f) through (k), as applicable, shall govern civil actions brought hereunder.

UNITED STATES CIVIL SERVICE COMMISSION
Federal Employee Appeals Authority
Washington, D.C. Field Office
Washington, D.C. 20415

November 7, 1974

SPECIAL MESSENGER-RETURN RECEIPT
Mr. Guy W. Chamberlin, Jr.
Acting Director of EEO
U.S. Department of Commerce
Room 5830
14th & Constitution Avenue, NW
Washington, D.C. 20230

Dear Mr. Chamberlin:

This is in response to your letter of October 15, 1974, received in this office October 18, 1974, wherein you requested the appointment of an EEO Complaints Examiner to hear the discrimination complaint filed on February 25, 1974 by Mr. Earl R. Brees, an applicant for employment with your agency.

We have reviewed the discrimination complaint file submitted with your request and conclude it would be

inappropriate to assign an Examiner to conduct a hearing at this time. Therefore, we are returning the complete complaint file to your office for further processing in accord with the applicable Civil Service regulations.

Specifically, Section 713.216(a), Part 713 of the regulations concerning investigation of complaints of discrimination provides in pertinent part:

> "The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the

> complainant. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision in the complaint shall, if available, be recorded by name in the investigative file...If necessary, the investigator may obtain information regarding the membership or non-membership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he shall not require or coerce an employee to provide this information."

Our review of the complaint file establishes that in his March 21, 1974 letter acknowledging acceptance of Mr. Bree's complaint (IR, Ex. 17), EEO Officer Clyde E. Ahrnsbrak defined the sole issue accepted by the agency for

processing as:

> "You alleged that the Office of Personnel Office of the Secretary, Department of Commerce has discriminated against you because of race in that the Office of Personnel refused to hire the Complainant - - - a convicted Caucasian misdemeanant - - - in a temporary position by applying standards other than those used to judge convicted Negroes."

Mindful of the above, our review of the complaint file establishes that the case is in improper regulatory posture in that it does not include information reflecting upon the treatment received by complainant and members of his group as compared to treatment received by persons outside his group. We therefore remand the case to your agency for supplemental investigation to rectify this deficiency.

We suggest that the investigator assemble and include in the investigative report

information concerning all occasions during the two year period prior to the filing of the instant complaint wherein the Office of Personnel, Office of the Secretary of Commerce, has processed applications for temporary employment filed by convicted individuals. Said information should establish the race of each applicant, the general nature of the conviction, the type of position applied for, whether a temporary appointment was subsequently effected, and the circumstances surrounding each appointment or non-appointment. Affidavits should then be obtained from knowledgeable individuals with respect to any appointments or non-appointments which appear to require detailed explanation.

Following completion of the supplemental

investigation, the case should be processed anew from the point of the informal adjustment attempt, including, if appropriate, the issuance of a new proposed disposition which pointedly informs complainant whether or not support has been found for the allegation. We shall then be pleased to handle a new request for the appointment of an Examiner, should it be necessary to continue the discrimination inquiry process.

Returned herewith is the complete complaint file.

Sincerely yours,

John H. Taylor
Acting Chief Appeals Officer

UNITED STATES CIVIL SERVICE COMMISSION
Federal Employee Appeals Authority
Washington, D.C. Field Office
Washington, D.C. 20415

February 28, 1975

SPECIAL MESSENGER-RETURN RECEIPT
Mr. Guy W. Chamberlin, Jr.
Acting Assistant Secretary
for Administration
U.S. Department of Commerce
Room 5830
14th & Constitution Avenue, NW
Washington, D.C. 20230

Dear Mr. Chamberlin:

By letter dated February 12, 1975 you were notified of my assignment as EEO Complaints Examiner to hear the discrimination complaint filed with your agency by Mr. Earl R. Brees, an unsuccessful applicant for employment.

I have scheduled the hearing for 9:00 A.M. Tuesday March 18, 1975. Please immediately advise me of the hearing room location and inform me of the identity of

the agency representative.

The person selected to represent the agency should submit to me by March 7, 1975 a letter listing the names of witnesses necessary to the agency's presentation at the hearing, accompanied by a general indication of the testimony relevant and material to the complaint issue which each can be expected to provide. Enclosed for the agency representative's information are a copy of the discrimination complaint hearing procedures and a diagram of the desired hearing room layout.

My review of the complaint file establishes that in his March 21, 1974 letter acknowledging acceptance of Mr. Brees' complaint, EEO Officer Clyde E. Ahrnsbrak defined the sole issue accepted by the agency for processing as:

> "You alleged that the Office of Personnel, Office of the Secretary, Department of Commerce has discriminated against you because of race in that the Office of Personnel refused to hire the Complainant --- a convicted Caucasian misdemeanant --- in a temporary position by applying standards other than those used to judge convicted Negroes."

It is apparent that a full and fair adjudication of the allegation accepted by the agency requires that the complaint file include evidence reflecting upon the treatment received by members and non-members of complainant's group (Caucasians) with respect to the action complained of. Thus, the file must include statistical information concerning the agency's prior record in appointing to temporary positions non-Caucasians possessing conviction records of which the agency had prior knowledge.

It is my determination that the supplemental investigation conducted by the agency in response to the November 7, 1974 remand of this matter by the ACting Chief Appeals Office, Washington Field Office, Federal Employee Appeals Authority, does not adequately rectify the deficiency of the initial investigation. Accordingly, the individual selected to represent the agency is hereby requested to deliver to me, not later than March 11, 1975, three copies of a listing of all instances during the two year period prior to the filing of the instant complaint wherein the Office of Personnel, Office of the Secretary of Commerce, has effected the temporary appointment of individuals possessing a conviction record of which the agency had knowledge prior to

effecting apppointment. To protect the privacy of those individuals who are included in this category, proper names shall not be used; however, the race of each appointee, the general nature of each appointee's conviction record, the type of position to which appointment was effected, and an explanation by knowledgable individuals of the circumstances surrounding the agency decision to effect appointment, should be clearly set forth. I emphasize that my request is made only with respect to (1) the race (2) of those individuals possessing conviction records (3) who received temporary appointments (4) effected by the Departmental Personnel Office (5) during the two ear period prior to the filing of the instant complaint (6) when the Personnel Office possessed knowledge of the conviction

record of the appointee prior to the time appointment was effected.

Although the specific method through which the agency might choose to gather information in response to this request remains a matter of agency discretion, it is suggested that the agency identify those applicants whose personnel files are presently readily accessible who received temporary appointments; review their employment applications and/or review the Departmental Office of Investigations and Security and the Departmental Rehabilitated Offender Program files reflecting upon those who received temporary appointments, to identify those who admitted convictions n their employment applications or whose convictions were brought to the attention of the Department prior to the effective

date of their appointments; and determine the racial identity of convicted appointees through the agency's minority group statistics reporting system, thorough voluntary identification by appointees themselves if presently employed by the Department, or through reported observations by appointee's knowledgeable coworkers.

The accuracy of the agency submission should be certified to by an appropriate official of the Department.

Sincerely yours,

/s/

Gregory V. Morrow, Jr.
EEO Complaints Examiner

EVIDENCE OF REHABILITATION BY EARL ROLAND BREES

May 67 Committed a misdemeanor for which he was convicted; the judgment in October 1967 was imposition of sentence suspended, one year probation.

8 Jun 67 Accepted employment with the Federal Government as an Accountant, GS-9.

27 Aug 67 Transferred from the Bureau of Land Management (BLM) to the Office of Economic Opportunity (OEO) with a promotion to Systems Accountant, GS-11. [His supervisor at BLM wrote that Mr. Brees "functioned as an Operating Accountant under my direct supervision", that Mr. Brees was "highly" proficient in his work and

conducted himself with professional decorum at all times", that "nothing in his work habits or attitude indicated that he was other than a conscientious trustworthy employee", and that "if a vacancy was available in my organization for which Mr. Brees was qualified, I would have no hesitancy in reemploying him". This gentleman was well aware of the difficulty Mr. Brees had in May 1967.]

Sep 67 Enrolled in graduate work at night at the American University. Received the degree of Master of Arts in Public Administration: Technology of Management

[Computer Systems and Management Information Systems] on 21 August 1970.

22 Oct 67 Promoted by OEO to Systems Accountant, GS-12, for outstanding work. [OEO admitted in July 1968 and November 1969 that Mr. Brees "consistently performed his work at a high degree of professional competence", that he was an "extremely hard worker and dedicated to his job", and that his supervisor wanted to promote him rather than discharge him because he was an outstanding employee.]

Feb 68 Taught computer programming at night from February 1968 to ay 1969 in addition to attending graduate school and

working as a Systemns Accountant, GS-12.

Apr 68 Training: Civil Service Commission; Apr-May 1968; Field Work Program in ADP Systems Analysis.

May 68 Recommended for a Quality Increase in Compensation for outstanding work.

6 Aug 68 Removed from probation prior to the completion of one year. The Government did not attempt to get a written report from his probation officer [even though FOM 731-8, Subchapter 2-4b(2), required that they consider such a report in a suitability determination] because the probation officer had given him a highly favorable oral recommendation; the probation office and OEO

approved is appointment as the COMPTROLLER of an OEO-funded organization where he would be handling approximately $100,000.

13 Jul 70 Successfully completed a four-hour comprehensive examination in Computer Systems for a master's degree.

15 Jul 70 Successfully completed a four-hour comprehensive examination in Management Information Systems for a master's degree.

Aug 70 Completed all the requirements for a Graduate Certificate in Computer Systems from the American University with an A-average.

21 Aug 70 Received the degree of Master of Arts in Public Administration: Technology of

Management [Computer Systems and Management Information Systems] after completion of 39 semester hours and two comprehensive examinations. Began this program in September 1967.

UNITED STATES GOVERNMENT

MEMORANDUM Date: 7/7/71

SUBJECT: Request for Investigation of Discrimination Complaint by Mr. Earl R. Brees

FROM: Stanley N. Taylor, Chief
Division of Adjudication and Appraisal

TO: Kimbell Johnson, Director
Bureau of Personnel Investigations

This is in response to your request for an analysis of the posture of the Brees case and the current request for investigation of his complaint by James Frazier, Jr.

First, I find it rather sad that so much money is being wasted on this case. As you will recall, this Division found Mr. Brees neligible for Accountant, for Senior Level Positions, for Digital

Computer Systems Analyst, and for Computer Technician on March 5, 1969.

My decision was appealed to you and to the Board of Appeals and Review, and my adverse decision was sustained. Mr. Brees has asked the Commissioners to reopen the case and they have refused.

The facts in the case are relatively simple. Mr. Brees attempted to embezzle more than $80,000 from a travel agency in 1967. He actually was successful in transferring that money to is wife's bank account but when he attempted to draw checks against it, an alert bank official became suspicious and the fraud was discovered. The charge was reduced to false pretense nasmuch as Mr. Bres never successfully converted the money to his own use and he was forced to make

restitution. To my knowledge, Mr. Brees has never expressed the slightest remorse over his crime--to the contrary he has taken a very belligerent attitude towards everyone in OEO and CSC who raised any question about his conduct. His chief regret seems to be that he never got to spend the money he stole, and his major activities seem to be to prove that he was discriminated against by both the Civil Service Commission and the Office of Economic Opportunity.

In light of thea bove-recited facts, it is difficult for me to nderstand the memoranda of Counselor Wilmer S. Hunt and Counselor Frank C. Kent who considered the case from the standpoint of racial discrimination.

Mr. Hunt states in his memorandum, inter alia:

> "This means that Mr. Brees has now been tried and cleared twice of the same charge by at least three separate levels within the Federal System:"
>
> and
>
> Certainly, this man should never have to be judged again on this score. Even the supreme law of the land allows that men can not be tried twice for the same crime."

I can only conclude that both Mr. Hunt and Mr. Kent are abysmally ignorant of the law and of the Civil Service Act, Rules and REgulations and the regulations governing discharges from the Federal Service.

Actually, Brees was tried and found guilty by the U.S. District Court for the District of Columbia. He was convicted and sentenced for his crime. Fortunately for him, the udge exercised nusual restraint and laced him on probation

instead of sending him to prison.

Neither OEO nor the Commission "tried" Mr. Brees in the sense used by Mr. Hunt. The agencies were determining his fitness to serve. In both instances the agencies decided, quite properly, I believe, that he was unfit to serve. That decision was affirmed by the highest appellate body in the Commission.

Unfortunately OEO was rather inept in effecting Mr. Brees' separation. On the first "go round" they made a procedural error and they were reversed by our Appeals Examining Office. On the second "go round" they made another procedural error by dismissing his discrimination complaint and again the case was remanded to the agency.

It is absolutely asinine to state that Brees has been "cleared" by anyone. The Commission never got around to adjudicating Brees' dismissal from OEO on the merits.

As to Mr. Brees' reformation and rehabilitation, many doubts assail me. He has shown himself, in my opinion, to be utterly unscrupulous--falsifying documents and twisting the statements of CSC and OEO officials. You may recall that on one occasion he had to be ejected from this office by the guards on your orders when he became utterly unruly and threatening towards Mr. Gillum, the Assistant Chief of this Division. We have every reason to believe that Mr. Brees adjusted the filing dates of his several applications to make it appear that he filed before he was formally

convicted of false pretense.

Under all the circumstances, I do not see what is to be gained by investigation of Mr. Brees' discrimination complaint. OEO avers that Mr. Brees is not satisfied that OEO will be impartial in its investigation. Does anyone consider it likely t hat he will be satisfied that the Commission will be impartial in its investigation? We have already ruled against him at the highest level. If we ndertake an investigation, I can forsee only more complaints that the Commission is not impartial. And Mr. Brees will pursue such allegations with his usual tenacity.

With respect to the investigation itself, what will the investigator seek to establish? Mr. Brees has made a very

convicted of false pretense.

Under all the circumstances, I do not see what is to be gained by investigation of Mr. Brees' discrimination complaint. OEO avers that Mr. Brees is not satisfied that OEO will be impartial in its investigation. Does anyone consider it likely t hat he will be satisfied that the Commission will be impartial in its investigation? We have already ruled against him at the highest level. If we ndertake an investigation, I can forsee only more complaints that the Commission is not impartial. And Mr. Brees will pursue such allegations with his usual tenacity.

With respect to the investigation itself, what will the investigator seek to establish? Mr. Brees has made a very

vague charge that there are black felons employed in OEO, and that he was discharged only because he is white. Should the investigator go around OEO asking whether there are any black embezzlers still serving in fiduciary positions? Even if he found one, which is extremely unlikely, it would not prove discrimination. Every case is rated on its own merits, and it is impossible to find two cases exactly the same.

It may be that we have no choice in he matter, and that we have to undertake the investigation. In that event, I suggest that before we begin, all of the facts recited above be called to the attention of Mr. Frazier and Mr. Rosen, so that they will be prepared for the usual avalanche of complaints that will issue from Mr. Brees. It might also be well to

call in an investigator from one of our regional offices so that when he is finished he can disappear from the scene. If a Washington investigator handles the investigation, it is likely that he will be subjected to abuse and harassment by Mr. Brees.

In re-reading the file I am struck by the thought that it would have been cheaper for OEO to pay Mr. Brees his regular salary to stay home and let them go about their business. Isn't that a sad commentary on how our appeals system can be perverted by one determined individual?

[Ad Rec., filed 5 October, 1977, p. 3281-3283.]

Title 5 C.F.R., January 1, 1969

§713.214 Investigation.

The Equal Employment Opportunity Officer or his designated representative shall promptly investigate the complaint. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. When gross data collected under Subpart C of this part will not provide the specific information needed to resolve a complaint of discrimi-

nation on the basis of race, creed, color, or national origin; the Equal Employment Opportunity Officer or his representative may collect the required data by asking each employee concerned to provide the specific information needed to resolve a complaint of discrimination on the basis of race, creed, color, or national origin, the Equal Employment Opportunity Officer or his representative may collect the required data by asking each employee concerned to provide the information voluntarily; he shall not require or coerce an employee to provide this information. The agency shall furnish the complainant and his representative opportunity to review the investigative file or shall furnish the complainant and his representative a written summary which contains all the information in the investigation material to the resolution of the

complaint. [Emphasis supplied.]

§713.215 Informal adjustment of complaint.

The agency shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file or a written summary of the investigation.

§713.216 Hearing.

(a) Offer of hearing. When the complaint is not adjusted on an informal basis, the agency shall offer the complainant an opportunity for a hearing in connection with his complaint to be held at a convenient time and place.

* * *

(c) Conduct of hearing. The hearing officer or committee shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the hearing

officer or committee shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or an employment policy or practices relevant to the complaint shall be received in evidence. The complainant, his representative, and the representative of the agency at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(d) Witnesses at hearing. The agency shall make its employees available as witnesses at a hearing on a complaint, upon a showing satisfactory to the hearing officer or committee of reasonable necessity therefor, when the complainant makes such a request and it is administratively practicable to comply with the request. Reasons for the denial of a request for the appearance of employees as witnesses

shall be documented in the record of the complaint. Employees of the agency shall be in a duty status during the time they are made available as witnesses. Witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony.

Title 5 C.F.R., January 1, 1973

§713.216 Investigation.

* * * * The agency shall authorize the investigator to administer oaths and require that statements of witnesses shall be under oath or affirmation, without a pledge of confidence. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organization segment in which the alleged discri-

mination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file. [Emphasis supplied.]